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SENATE BILL 864

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE ANGEL INVESTMENT
CREDIT FOR INVESTMENT IN CERTAIN BUSINESSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is
enacted to read:

"[NEW MATERIAL] ANGEL INVESTMENT CREDIT. --

A. A taxpayer who files a New Mexico income tax
return, is not a dependent of another taxpayer, is an
accredited investor and makes a qualified investment may claim
a credit in an amount not to exceed twenty-five percent of not
more than one hundred thousand dollars (\$100,000) of the
qualified investment. The tax credit provided in this section
shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment

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1 credit for not more than three qualified investments in a
2 taxable year; provided that each investment is in a different
3 qualified business. A taxpayer may claim the angel investment
4 credit for qualified investments made in the same qualified
5 business or successor of that business for not more than three
6 taxable years. The angel investment credit shall not exceed
7 twenty-five thousand dollars (\$25,000) for each qualified
8 investment by the taxpayer.

9 C. A taxpayer may claim the angel investment
10 credit no later than one year following the end of the
11 calendar year in which the qualified investment was made;
12 provided that a claim for the credit may not be made or
13 allowed with respect to any investment made after December 31,
14 2011.

15 D. A taxpayer shall apply for certification of
16 eligibility for the angel investment credit from the economic
17 development department. Applications shall be considered in
18 the order received. If the department determines that the
19 taxpayer is a qualified investor and the investment is a
20 qualified investment, it shall issue a certificate of
21 eligibility to the taxpayer, subject to the limitation in
22 Subsection E of this section. The certificate shall be dated
23 and shall include a calculation of the amount of the angel
24 investment credit for which the taxpayer is eligible. The
25 economic development department may issue rules governing the

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1 procedure for administering the provisions of this subsection.

2 E. The economic development department may issue a
3 certificate of eligibility pursuant to Subsection D of this
4 section only if the total amount of angel investment credits
5 represented by certificates of eligibility issued by the
6 economic development department in any calendar year will not
7 exceed seven hundred fifty thousand dollars (\$750,000). If
8 the applications for certificates of eligibility for angel
9 investment credits represent an aggregate amount exceeding
10 seven hundred fifty thousand dollars (\$750,000) for any
11 calendar year, certificates shall be issued in the order that
12 the applications were received. The excess applications that
13 would have been certified, but for the limit imposed by this
14 subsection, shall be certified, subject to the same limit, in
15 subsequent calendar years.

16 F. To claim the angel investment credit, the
17 taxpayer must provide to the taxation and revenue department a
18 certificate of eligibility issued by the economic development
19 department pursuant to Subsection D of this section and any
20 other information the taxation and revenue department may
21 require to determine the amount of the tax credit due the
22 taxpayer. If the requirements of this section have been
23 complied with, the taxation and revenue department shall
24 approve the claim for the credit.

25 G. A taxpayer who otherwise qualifies for and

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1 claims a credit pursuant to this section for a qualified
2 investment made by a partnership or other business association
3 of which the taxpayer is a member may claim a credit only in
4 proportion to the taxpayer's interest in the partnership or
5 business association. The total credit claimed in the
6 aggregate by all members of the partnership or business
7 association in a taxable year with respect to a qualified
8 investment shall not exceed twenty-five thousand dollars
9 (\$25,000).

10 H. A husband and wife who file separate returns
11 for a taxable year in which they could have filed a joint
12 return may each claim one-half of the credit that would have
13 been allowed on a joint return.

14 I. The angel investment credit may only be
15 deducted from the taxpayer's income tax liability. Any
16 portion of the tax credit provided by this section that
17 remains unused at the end of the taxpayer's taxable year may
18 be carried forward for three consecutive years.

19 J. As used in this section:

20 (1) "accredited investor" means a person who
21 is an accredited investor within the meaning of Rule 501
22 issued by the federal securities and exchange commission
23 pursuant to the federal Securities Act of 1933, as amended;

24 (2) "business" means a corporation, general
25 partnership, limited partnership, limited liability company or

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1 other similar entity, but excludes an entity that is a
2 government or a nonprofit organization designated as such by
3 the federal government or any state;

4 (3) "equity" means common or preferred stock
5 of a corporation, a partnership interest in a limited
6 partnership or a membership interest in a limited liability
7 company, including debt subject to an option in favor of the
8 creditor to convert the debt into common or preferred stock, a
9 partnership interest or a membership interest;

10 (4) "high-technology research" means
11 research:

12 (a) that is undertaken for the purpose
13 of discovering information that is technological in nature and
14 the application of which is intended to be useful in the
15 development of a new or improved business component of the
16 qualified business; and

17 (b) substantially all of the activities
18 of which constitute elements of a process or experimentation
19 related to a new or improved function, performance,
20 reliability or quality, but not related to style, taste or
21 cosmetic or seasonal design factors;

22 (5) "manufacturing" means combining or
23 processing components or materials to increase their value for
24 sale in the ordinary course of business, but does not include:

25 (a) construction;

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- (b) farming;
- (c) processing natural resources,
including hydrocarbons; or
- (d) preparing meals for immediate
consumption, on- or off-premises;
- (6) "qualified business" means a business
that:
 - (a) maintains its principal place of
business in New Mexico;
 - (b) engages in high-technology research
or manufacturing activities in New Mexico;
 - (c) is not primarily engaged in or is
not primarily organized as any of the following types of
businesses: credit or finance services, including banks,
savings and loan associations, credit unions, small loan
companies or title loan companies; financial brokering or
investment; professional services, including accounting, legal
services, engineering and any other service the practice of
which requires a license; insurance; real estate; construction
or construction contracting; consulting or brokering; mining;
wholesale or retail trade; providing utility service,
including water, sewerage, electricity, natural gas, propane
or butane; publishing, including publishing newspapers or
other periodicals; broadcasting; or providing internet
operating services;

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1 (d) has not issued securities
2 registered
3 pursuant to Section 6 of the federal Securities Act of 1933,
4 as
5 amended; has not issued securities traded on a national
6 securities exchange; is not subject to reporting requirements
7 of the federal Securities Exchange Act of 1934, as amended;
8 and is not registered pursuant to the federal Investment
9 Company Act of 1940, as amended, at the time of the
10 investment;

11 (e) has one hundred or fewer employees
12 calculated on a full-time-equivalent basis at the time of the
13 investment; and

14 (f) has not had gross revenues in
15 excess of five million dollars (\$5,000,000) in any fiscal year
16 ending on or before the date of the investment; and

17 (7) "qualified investment" means a cash
18 investment in a qualified business for equity, but does not
19 include an investment by a taxpayer if the taxpayer, a member
20 of the taxpayer's immediate family or an entity affiliated
21 with the taxpayer receives compensation from the qualified
22 business in exchange for services provided to the qualified
23 business within one year of investment in the qualified
24 business. "

25 Section 2. TEMPORARY PROVISION. --In taxable years 2013

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1 through 2015, a taxpayer may carry forward amounts resulting
2 from angel investment credits claimed and approved for
3 qualified investments made in the calendar year 2009, 2010 or
4 2011.

5 Section 3. DELAYED REPEAL. --Section 1 of this act is
6 repealed effective January 1, 2013.

7 Section 4. APPLICABILITY. --The provisions of this act
8 apply to taxable years beginning on or after January 1, 2007.

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